Advanced
Legal Description Writing

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New Jersey Society
of Professional Land Surveyors

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Presented by

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Meridian Land Consulting, LLC

Westfield, Indiana

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Biography of Gary R. Kent

Gary Kent is a part-time Professional Surveyor with Schneider Geomatics, a land surveying and consulting engineering firm based in Indianapolis. He is in his 40th year with the firm and upon his transition to part-time status in 2020, he formed Meridian Land Consulting, LLC through which he provides training, consulting and expert witness services.

Gary is a graduate of Purdue University with a BS in Land Surveying; he is registered to practice as a professional surveyor in Indiana and Michigan. He served as chair of the joint ALTA/NSPS Workgroup on the ALTA/NSPS Standards from 1995 to 2021. Gary is a past-president of both the American Congress on Surveying and Mapping and the Indiana Society of Professional Land Surveyors.

A member of the adjunct faculty for Purdue University from 1999-2006, Gary taught Boundary Law, Legal Descriptions, Property Surveying and Land Survey Systems and was awarded "Outstanding Associate Faculty" and "Excellence in Teaching" awards for his efforts. Gary is on the faculty of GeoLearn (www.geo-learn.com), an online provider of continuing education and training for surveyors and other geospatial professionals. He is also a certified instructor for the International Right of Way Association.

Gary has served on the Indiana State Board of Registration for Professional Surveyors since 2004. He is frequently sought as an expert or consulting witness in cases involving boundaries, easements, riparian rights, survey standards and land surveying practice. He has presented programs on boundary law, easements and rights of way, surveying standards and practice, and leadership multiple times in each the 50 states and three times in Europe. He is also a columnist for The American Surveyor magazine.

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I. Background and Considerations

A. New Jersey Administrative Code 13:40-1.3

Definitions

"Land surveying" or "surveying" or "practice of land surveying" means any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences and the relevant requirements of law to the act of measuring and locating distances, directions, elevations, natural and man-made topographical features in the air, on the surface of the earth, within underground workings, and on beds of bodies of water for the purpose of determining areas and volumes, and for the establishing of horizontal and vertical control as it relates to construction stake-out, for the monumentation of property boundaries and for platting and layout of lands and subdivisions thereof and for the preparation and perpetuation of maps, record plats, field notes, records and property descriptions in manual and computer coded form that represents these surveys. The practice of land surveying includes the establishment and maintenance of the base mapping and related control for land information systems that are developed from the practice of land surveying.

B. New Jersey Administrative Code 13:40-5.1

Professional Land Surveyors; Preparation of Land Surveys

a) The practice of land surveying includes surveying of areas for their correct determination and description and for conveyancing, and for the establishment or reestablishment of land boundaries and the plotting of lands and subdivisions thereof, and such topographical survey and land development as is incidental to the land survey.

C. 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys

Section 6. A plat or map of an ALTA/NSPS Land Title Survey shall show the following information….

Section 6.B.ii. - Any new description of the surveyed property that was prepared in conjunction with the survey, including a statement explaining why the new description was prepared. Except in the case of an original survey, preparation of a new description should be avoided unless deemed necessary or appropriate by the surveyor and insurer. Preparation of a new description should also generally be avoided when the record description is a lot or block in a platted, recorded subdivision. Except in the case of an original survey, if a new description is prepared, a note shall be provided stating (a) that the new description describes the same real estate as the record description or, (b) if it does not, how the new description differs from the record description.

D. Lender Requirements

Lenders – in associated with an ALTA/NSPS Land Title Survey - often demand that the surveyor prepare a new metes and bounds description for every property surveyed unless the results of the survey are exactly the same as in the record description.

Following are the requirements from the John Hancock Life Insurance Company (dated February 23, 2016) relating to legal descriptions.

…

4) ***Legal Description Requirements*****.** The surveyor is to prepare a new metes and bounds legal description of the perimeter of the limits of the Property with reference to record course distances and bearings. If conveniently available to the surveyor, the new description shall also reference adjoining property owners.

a) **Legal Description**. The description of the Property shown on the survey must conform to the legal description shown in the owner's title insurance commitment for the Property.

1) **Assurance Note**. The new legal description shall be followed by a note stating that it describes the same property as shown of record and in the title insurance commitment. An example of this note is as follows:

"The foregoing legal description describes the same property as shown in the vesting deed, recorded at _____ and is the same property described in Schedule A of title insurance commitment no. _____ bearing an effective date of _____ as prepared by _____."

2) **Variations**: If the new perimeter legal description describes different property, then the required note shall explicitly describe how it varies from the record and title insurance commitment legal description.

b) **Metes and Bounds Description**. A metes and bounds description must comply with the following standards:

Composite, perimeter type: The legal description should be a single perimeter description of the entire Property and should return to the Point of Beginning. If the Property is formed by two or more contiguous tracts of land, the new legal shall be a composite legal that describes the overall boundary of all tracts. If the Property is two or more non-contiguous tracts of land, then a separate metes and bounds description will be needed for each non-contiguous portion.

1) The Point of Commencement ("POC") and/or the Point of Beginning ("POB") should be shown on the survey and established by an existing monument either marking the exact point or on nearby reference points so its position can be recreated by future surveyors easily and accurately. The POC and/or POB chosen shall comply with local practices for the recordation of the new legal description. In the absence of local mandates, the POC and/or POB shall be points of intersection of right-of-way or center lines of public streets or roads or at original lot, tract or section corners.

2) The sides of the Property should be described by stating each course distance, bearing and the bounding property owner whether owned privately or publicly with recording reference. In lieu of bearings, it is equally acceptable to use the interior angle method, provided that the beginning point is located on a public street line or other properly fixed line or the course of the first side is otherwise properly fixed.

3) The distances, bearings and angles should be taken from a recent on-the-ground instrument survey by a licensed civil engineer or registered surveyor.

4) Curved sides should be described by data including: length of arc, radius of circle for the arc and chord distance and bearing.

5) Where a survey course is part of a dedicated public street or road line, the course may be described by indicating the distance and direction the course takes along the street line from the end of the previous course.

6) All easements appurtenant to the Property must be added to the end of the legal description using the same identical language as contained in the vesting document of record. If any such legal is incorrect or inaccurate, then the survey shall report this in a note after the description.

c) <u>Additional Acceptable Descriptions</u>.

1) A description composed of lots and/or blocks including a reference to a recorded map or plat that shows the lots or blocks is usually adequate.

2) Although encountered in only a few cases, a description of a parcel bounded on all sides by streets or alleys can acceptably refer only to the bounding lines of the streets or alleys.

3) A description of registered property is acceptable if in form required by the local Torrens Act or approved in the registration.

Surveyors must consider such demands carefully oftentimes they are unnecessary at best and inappropriate or detrimental to the underlying title of the parcel, at worst. It is a fact

that attorneys demand things of surveyors that they are fully aware the surveyor should not do. Unfortunately, too many surveyors bend to these threats and that just emboldens the lenders.

For example, one frequent demand is that the surveyor prepare a metes and bounds description for a platted lot. While there are rare situations when that might be appropriate, it is generally a fool's errand, and at a minimum, the surveyor should do two things: (1) charge a fee for the work (that, all by itself, may dissuade the attorney, and (2) do not do damage to the underlying title of the parcel by preparing such a description; in other words, make sure there are appropriate controlling calls to the lot corners and along the lines.

In addition, preparing a new a description simply because the measured dimensions differ from the record is often, if not usually, unnecessary. Lenders get obsessed with exactness – the measured dimensions on the survey must, in their mind, exactly match the legal description, and if they do not, they want a new description.

In this author's experience, such a practice is generally not the case in most areas of the United States, but there are areas where it is regular practice – sometimes because it is – or is considered to be - the normal standard of care, and sometimes because of real or perceived interpretations of laws and/or administrative regulations.

II. The Sufficient Legal Description

A. Purpose, Sufficiency and Ambiguities

The primary purpose of a legal description is to describe the specific size, shape and location of a unique parcel of real property, and no other, without ambiguity.

A legal description contains the written instructions for locating a property on the surface of the earth – or provides a pointer to where those instructions can be found.

A legal description must be considered legally "*sufficient*" or the conveyance in which it appears may be declared invalid or require reformation.

"*Sufficiency*" means that a competent person – which, in the case of a legal description, would be a professional surveyor - can locate the described real estate on the ground, with or without reference to extrinsic evidence.

Extrinsic evidence in order to effect an interpretation of a legal description is allowed only the description suffers from one or more ambiguities. Extrinsic evidence is not allowed to change the terms of a legal description when there are no ambiguities,

"Evidence from outside the written document that may be sought to:

i. Explain the meaning of words existing within a written conveyance; and
ii. To explain conditions existing as to the date of the deed."[1]

[1] Boundary Control and Legal Principles, Brown, Robillard and Wilson

If a professional surveyor cannot locate the real estate on the ground, it may be found to be an indeterminate tract of land – an insufficient description. If the property cannot be identified, it is assumed that no conveyance took place.

Sufficient? - An exception contained in a deed in Tippecanoe County, Indiana…

> EXCEPTING also a piece of ground about 7 feet wide and 14 feet long near the Northeast corner of the West Half of the Northeast quarter of said Section, Township and Range aforesaid.

B. Do's and Don'ts

There is a long, virtually never-ending list of things that the scrivener surveyor must do, or not do, in the preparation of a description in order to avoid ambiguities and the need for interpretation by a court.

- Clear, concise, complete
- No abbreviations
- Confirm accuracy of caption
- *Write intent into the description; do not try to let the math do the work*
- Include the basis of bearings
- Provide adequate curve data (tangent, nontangent)
- "*Described in*" not "*Conveyed by*"
- "*Except, however*" vs. "*Subject to*"
- Identify and understand controlling calls
- Address multiple exceptions clearly
- Proper meander line reference
- Proper reference to a water boundary
- Include datum when dependent on an elevation
- Do not include wording in an easement description relating to the use or intent of the easement; simply describe the real property involved.
- What does "124.56 feet, deed (124.79 feet, measured)" mean in a description? How is it helpful?
- "Along a fence"
- Punctuation — Punctuation is important, but the proper interpretation of a legal description should not rely on punctuation
- What others are on your list?

Gaps and Overlaps

Do not include gaps between parcels unless:

- The owner has written title either from a prior owner or from a court decree, or
- An attorney will issue an opinion vouching for it, or
- In the case of a Land Title Survey, a title company will insure it

Do not include overlaps between parcels until there is a written agreement with the affected adjoiner to that effect.

It should be noted that surveyors may need to prepare tentative descriptions that include gaps or overlaps as part of the resolution of those problems through litigation or agreement. In such cases, the surveyor should assure that the purpose of the description is clearly explained and be certain that the reader understands it is not an opinion as to the underlying title of the gap or overlap.

C. Understanding the effect of typical words and phrases

Surveyors must give due consideration to how words used in a description may be interpreted.

Even the placement of a words or a few words in the wrong place in the description can result in an interpretation different from what the scrivener may have intended. As Gurdon Wattles noted:

> *When words, or the lack of them, or the arrangement of them, used in descriptions results in ambiguity, both the interpretation of them and the physical location of the boundary lines from them become questionable.* Writing Legal Descriptions: In Conjunction with Survey Boundary Control, Gurdon Wattles (1976)

i. The Parts of a Legal Description

Surveyors all understand the generally accepted three parts of a legal description – the caption, body and qualifications/augmenting clauses. This structure is generally true for metes and bounds descriptions, but not for all types. Some have no caption at all, while with some, the entire description is contained within the caption.

The caption serves two purposes. First, in just a few words it identifies the relatively small geographic area that the property lies within (e.g., in the public land survey states, Part of the Northwest Quarter of Section 12"). But just as, if not more, importantly, from a title standpoint it confines the body of the description to that area. In other words, caption controls the title by specifying the area in which the property lies; the body of the description cannot stray outside the area outlined in the caption; or, at a minimum, there is a potential title problem.

It may or may not be advisable to include some augmenting or qualifying clauses in a description because much, if not most, of the time, they represent tissues of title, not location. For example, a description is subject to all easements and rights of way of record whether that is stated or not. However, local practice or standards of care may dictate or guide the surveyor on how such clauses are used or whether to use them at all.

We often think of a legal description as needing to identify the exact location, size and shape of the property being described. This is, however, not exactly true.

What the legal description actually needs to do is either accurately describe the property, or *provide the means by which it can be identified.*

A helpful, if somewhat deficient, example of this is the lot and block description. A deed carrying the description Lot 12 in Bridlewood Addition per plat thereof recorded in Plat Book 12, Page 37 in the Office of the Recorder of Boone County, Indiana – by itself – tells the reader absolutely nothing other than the property is in Boone County. But the description contains a "pointer" (the plat book and page) by which the location, size and shape of the property can be identified. This is an important concept because surveyors may tend to disregard a certain description as insufficient, when all they may need to do is dig a little deeper for some extrinsic evidence that could point to a solution to their conundrum.

In the metes and bounds states, it is common to include a "being" clause in the caption. This ties the current description to its source of title and can help prevent disconnectedness within the chain of title, but only if the new description is, in fact, describing exactly the same property. Such clauses are generally not used in the public land survey states, although it would seem it could be helpful if it were.

D. Determining or establishing intent

The intent of a description is garnered from the legal description contained in the conveyancing document, and nowhere else, with a few exceptions: where there is a latent ambiguity or where the description is ambiguous.

> "A deed is a contract[,]" and, "`[a]s with any instrument, a deed must be read as a whole in order to ascertain the grantor's intent.'" In re *Rudell Estate*, 286 Mich App 391, 402, 409; 780 NW2d 884 (2009) (citation omitted). Contracts, such as deeds, are subject to the parol evidence rule, which precludes the use of extrinsic evidence when interpreting unambiguous contractual language, but ambiguous contracts open the door to the admission of extrinsic evidence to establish the actual intent of the parties. *Shay v Aldrich*, 487 Mich 648, 667; 790 NW2d 629 (2010). An ambiguity can be either patent or latent, and the Shay Court further elaborated:
>
> > This Court has held that extrinsic evidence may not be used to identify a patent ambiguity because a patent ambiguity appears from the face of the document. However, extrinsic evidence may be used to show that a latent ambiguity exists. . . . A latent ambiguity exists when the language in a contract appears to be clear and intelligible and suggests a single meaning, but other facts create the "`necessity for interpretation or a choice among two or more possible meanings.'" To verify the existence of a latent ambiguity, a court must examine the extrinsic evidence presented and determine if in fact that evidence supports an argument that the contract language at issue, under the circumstances of its formation, is susceptible to more than one interpretation. Then, if a latent ambiguity is found to

> exist, a court must examine the extrinsic evidence again to ascertain the meaning of the contract language at issue. [Id. at 667-668 (citations omitted).]
>
> *Halberg v. PFEIFFELMANN*, Mich: Court of Appeals 2012 (unpublished)

Stated another way, no evidence shall be used to interpret a written instrument of conveyance other than the contents of the instrument, except to explain an extrinsic ambiguity[2]

The "Order of Conflicting Title Evidence"[3] documented by Curtis Brown (and subsequently Walter Robillard and Donald Wilson) in Brown's Boundary Control and Legal Principles[4], clearly outlines that — after the effect of unwritten rights and senior rights (both generally considered to be issues of title) — the stated intentions of the parties are the number one consideration in resolving conflicts. It is well-documented and all surveyors know; however, that in a retracement survey, they are to follow in the footsteps of the original surveyor of the tract – which may or may not match the words in the conveyance. This is not a conflict with the order outlined in Brown because the courts have essentially held that when the legal description in a deed was based on survey, conflicts are resolved by going to the source of that written description – which was the survey. So, in a way, following in the footsteps is the epitome of written intentions of the parties.

Speaking of "the parties," they are not always necessarily the grantor and grantee. For example, if the grantor of a parcel had had a survey conducted at some prior date and subsequently conveyed that parcel as surveyed and described by the surveyor to a grantee, one could readily argue that the only intentions associated with the actual legal description of the parcel were on the part of the grantor.

On the other hand, if a conflict ensues as to what representations were made by the grantor and perceived by the grantee – perhaps there is an alleged misrepresentation - there may be a valid disagreement as to was actually conveyed; but the intent of the document itself is as written (or as surveyed in the case of an original survey).

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[2] There are several other exceptions, but extrinsic ambiguities are the exceptions relating to uncertain boundaries

[3]
A. Right of Possession (unwritten conveyances)
B. Senior Rights (in the event of an overlap)
C. Written Intentions of Parties
    1. Call for a Survey or an actual survey on which the conveyances is based
    2. Call for monuments
        a. Natural
        b. Artificial
    3. Adjoiners
    4. Distance and Direction
    5. Direction or Direction
    6. Area (quantity)

[4] Fifth Edition, p. 307

Unwritten Rights/Rights of Possession

Where there is no ambiguity in a description, the surveyor may not - on a retracement survey - decide to modify the legal description to include land that he or she believes may have become part of the surveyed tract by virtue of unwritten rights like adverse possession, acquiescence or parol agreement.

> *No one has the legal right nor vested authority to change any line of a recorded title without a new and proper document in the recorder's office to support it.* Writing Legal Descriptions: In Conjunction with Survey Boundary Control, Gurdon Wattles (1976)

However, an exception to this rule may be called for when the owners of the adjoining properties are the same ones who, for example, actually *made* the parol agreement or who originally acquiesced in the line and continue to peaceably agree on that line.[5] Of course, if the parties no longer agree on that line, all bets are off and, while surveyors might wish to try to help the owners fashion an agreement,[6] they – the surveyors - cannot do this on their own.

However, if there is a latent ambiguity revealed by the conditions on the ground as against the legal description, the surveyor may have license to explore evidence of old fences, surveys and other evidence of possession that might be an indication of what the party's intentions were at the time of the conveyance.

> For possession to represent evidence of the original lines created by the original surveyor, the following five facts should apply:
>
> 1. There was an early survey that, if located, is controlling the line between the adjoiners.
> 2. The lines of possession are along the lines surveyed or presumed to have been surveyed by the surveyor.
> 3. Usually, but not always, a series of possessions, in agreement with one another, substantiate one another.
> 4. Possession is an ancient matter of a former generation (if it is of a present generation someone can testify about its origin).
> 5. Possession has the reputation of being on the correct survey lines.[7]

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[5] [T]he surveyor should hesitate long before doing anything to the disturbance of settled possessions. Occupation, especially if long continued, often affords very satisfactory evidence of the original boundary when no other is attainable; and the surveyor should inquire when it originated, how, and why the lines were then located as they were, and whether a claim of title has always accompanied the possession…. *The [Quasi-] Judicial Function of Surveyors,* Justice Thomas Cooley 1881.

[6] It is always possible, when corners are extinct, that the surveyor may usually act as a mediator between parties and assist in preventing legal controversies by settling doubtful lines. [T]he same authority that makes [the surveyor] an officer and entrusts him to make surveys, also allows parties to settle their own boundary lines, and considers acquiescence in a particular line or monument, for any considerable period, as strong if not conclusive evidence of such settlement. Ibid.

[7] Evidence and Procedures for Boundary Location, 4th Edition, Brown, Robillard, Wilson, 2002

In such cases, the old fence might not necessarily be evidence of an unwritten right – and the unwritten right should probably not be the basis for the surveyor's opinion – but it may be evidence of the original line.

Alternatively and as mentioned above, if the surveyor is asked to prepare a description that includes possible unwritten rights as part of litigation or to help settle a dispute, that is logical and acceptable, but caution should be taken to make it clear that the description is not a statement as to who may have title to the property and to outline the purpose of the description.

E. Determining what controls

i. References to monuments in land descriptions

Surveyors know that monuments tend to fall into relatively discrete categories of natural and artificial. Brown had even referred to adjoners as "record" monuments. But this hierarchy has its roots not so much in those strict categories, but in the idea that natural monuments are less likely to be confused than artificial monuments. And adjoners' lines may be invisible "on the ground," yet still convey a written intent.

The hierarchy in monuments is: first natural, then artificial, followed by adjoiners. Thus, when there is a conflict in calls between monuments in a legal description, it is resolved by applying the hierarchy.

Surveyors must avoid wording that can result in the need for interpretation or, if the possibility for confusion exists, they must know what words and what arrangement of those words will accomplish the intent without ambiguity. This may take careful thought and if the description is based on a survey, the effect that the survey and its monuments may have on the interpretation of the description.

For example, when a description calls a distance to an artificial monument placed on an adjoiner's line, and if two or all of those elements are in conflict (the monument is not at the called distance, and neither is it on the adjoiner's line), how would the courts sort that out? The wording is critical and the monuments set on the survey are of paramount consideration.

ii. References to maps and plats in land descriptions

Referencing plats and maps — and the lines and corners shown thereon — in a legal description is a distinct and clear way to express intent. When those documents are of record, there is normally little cause for confusion; the scrivener merely references the document and its recording information (e.g., Deed Book 154, Page 321, Office of the Marion County Recorder).

However, what if the document of interest is not recorded? Should the surveyor make reference to it anyway? Author, speaker and educator Knud Hermansen a few years ago. While a reference to a *recorded* document is unambiguous, references to unrecorded documents are not so transparent, so they must be as

specific as possible – citing the name of the certifying surveyor, date of certification, dates of any revisions, company name and even the job number.

This only makes sense. Given the overriding importance of the monuments found or set and the lines run on an original survey, surveyors should do whatever they can to make those surveys controlling in their descriptions.

For example, the caption for a new parcel surveyed and described, but which survey has not yet been recorded, might read:

> Part of the Northwest Quarter of Section 12, Township 18 North Range 4 East of the Second Principal Meridian in Hamilton County, Indiana, being that 5.64 acre parcel surveyed by Gary R. Kent, Indiana Professional Surveyor #80040389 and shown on a plat of survey certified on March 31, 2017 as The Schneider Corporation Job number 2586.001 and last revised on April 4, 2017 (all monuments referenced herein are as set or found on the aforesaid Kent survey), being more particularly described as follows:
>
> Commencing at a Harrison monument referenced by the Hamilton County Surveyor as marking the northeast corner of said northwest quarter; thence North 88 degrees 57 minutes 13 seconds West along the north line of said northwest quarter (basis of bearings is Indiana State Plane Coordinate System, North American Datum of 1983) a distance of 977.50 feet to a Mag Nail in washer stamped "Schneider Firm #0001" set at the Point of Beginning; thence continuing North 88 degrees 57 minutes 13 seconds West along said north line a distance of 200.00 feet to a Mag Nail in washer stamped "Schneider Firm #0001" set; thence South 01 degrees 02 minutes 47 seconds West a distance of 300.00 feet to a 5/8 inch by 24 inch rebar with yellow cap stamped "Schneider Firm #0001" found; thence South 88 degrees 57 minutes 13 second East parallel with the north line of said northwest quarter a distance of 200.00 feet to a 5/8 inch by 24 inch rebar with yellow cap stamped "Schneider Firm #0001" found; thence North 01 degrees 02 minutes 47 seconds East a distance of 300.00 feet to the Point of Beginning. Containing 1.377 acres, more or less.

iii. Curves

Even today, this writer sees legal descriptions containing insufficient data to define a curve. This is inexcusable; the scrivener needs to assure that two independent elements of the curve are provided in order to define its geometry, and that information is provided regarding the direction that it runs.

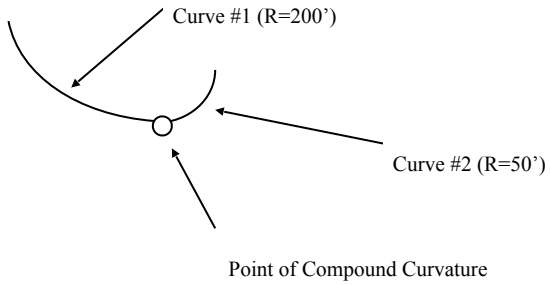
Perhaps most often, this is provided by virtue of a radius and arc distance along with the long chord bearing and length (which would actually be redundant, given radius and arc), together with the direction (e.g., "along a curve to the left").

This writer personally prefers identifying the geometry and direction of a curve by providing the radius length, the direction to the radius point from the point of

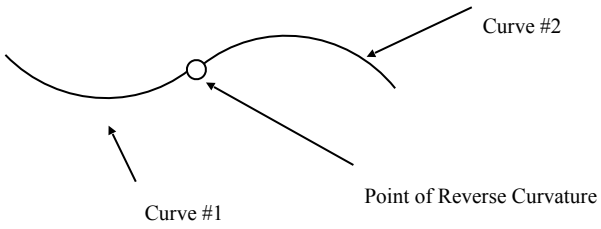
curvature, and the direction to the radius point to the point of tangency. An arc length is also provided (which would be mathematically redundant, but which *does* provide the actual length of the course).

Speaking of points of tangency and curvature, it is assumed a curve is tangent unless stated otherwise. And the use of the term point of curvature implies a tangent curve. However, it is not too unusual to see descriptions that include wording like "to the point of curvature of a non-tangent curve", which is nonsense. The wording should simply state "…to a non-tangent curve," or "…to a point on a non-tangent curve."

Fixed radius curves come in three types – simple, compound and reverse. A compound curve is two simple curves of different radii running one immediately into the next and in the same direction.



A reverse curve is two simple curves of the same or different radii running one immediately into the next, but changing in direction.



Tangent Curve - Template

…thence North 85 degrees 00 minutes 00 seconds East a distance of 950.00 feet to the point of curvature of a curve having a radius of 300.00 feet, the radius point of which bears South 05 degrees 00 minutes 00 seconds East; thence easterly and southerly along said curve an arc distance of 200.00 feet to a point bearing North

33 degrees 11 minutes 50 seconds East from the radius point; thence South 56 degrees 48 minutes 10 seconds East a distance of 450.00 feet; thence …

Non-Tangent Curve - Template

…thence North 85 degrees 00 minutes 00 seconds East a distance of 950.00 feet to a non-tangent curve having a radius of 300.00 feet, the radius point of which bears South 45 degrees 00 minutes 00 seconds East; thence northeasterly and easterly along said curve an arc distance of 200.00 feet to a point bearing North 06 degrees 48 minutes 10 seconds West from the radius point; thence South 56 degrees 48 minutes 10 seconds East a distance of 450.00 feet; thence …

Reverse Curve (all tangent)

…thence North 85 degrees 00 minutes 00 seconds East a distance of 950.00 feet to the point of curvature of a curve having a radius of 300.00 feet, the radius point of which bears South 05 degrees 00 minutes 00 seconds East; thence easterly and southerly along said curve an arc distance of 200.00 feet to the point of reverse curvature of a curve having a radius of 500.00 feet, the radius point of which bears North 33 degrees 11 minutes 50 seconds East; thence easterly along said curve an arc distance of 75.00 feet to a point bearing South 24 degrees 36 minutes 10 seconds East from the radius point; thence North 65 degrees 23 minutes 50 seconds East a distance of 450.00 feet; thence …

Compound Curve (all tangent)

Same template as reverse curve, only use "point of compound curvature" rather than "point of reverse curvature."

Non-Tangent Compound and Reverse Curves

Use appropriate combinations of the above.

iv. Water boundaries

When legal descriptions are to contain reference to a water boundary, it is incumbent on scriveners to understand and account for the differences between navigable and non-navigable waters if there be such a difference in their state.

In the former, they need be knowledgeable as to the extent of title in their state relating to navigable waters vis-à-vis any potential ownership by the state.

In the latter, they need to understand what the intent of the parties was and whether or not the common law in their state would ostensibly allow such an intent. For example, in some states, the weight of authority is that a regardless of a call to the bank of a non-navigable stream, the conveyance actually includes title to the center of the stream.

An excellent resource relating to water boundaries is the late James A. Simpson's book River and Lake Boundaries (Second edition), Plat Key Publishing, 2005 (available through the National Society of Professional Surveyors' estore).[8]

In describing a water boundary geometrically, it is necessary to utilize a meander line or lines. The wording of a meander line is important so it is clear to the reader that the described line(s) is/are, in fact, a meander line and not definitive geometry of the boundary itself. This is because a meander line is, except in relatively rare cases, *not* the boundary line. The boundary is the ambulatory water feature (e.g., the ordinary high water mark in the case of navigable waters, or the flow/center line in the case of nonnavigable waters). This writer prefers meander line wording similar to the following:

> … to the easterly high water mark of the Crystal River; thence meandering said high water mark the following __ courses, (1) North 13 degrees 26 minutes 00 second East a distance of 257.00 feet; (2) thence North 15 degrees 25 minutes 00 seconds West a distance of 310.00 feet; thence …

When leaving the meander line upon reaching some preexisting title, consideration must be given to fix the end of the meander line at that title line. Accomplishing this successfully may take some careful thought.

iv. Aerial and subterranean descriptions

Legal descriptions that deal with rights dependent on elevations – either aerial or subterranean – can present unique challenges.

Scriveners must avoid the temptation to tie such descriptions to fixed features like buildings, sidewalks, and streets. Even tying to a benchmark will be deficient unless the elevation of the benchmark is specifically defined in the description and/or a datum given.

This writer has prepared descriptions for air rights over airport runways, for the vacation of areas above public streets, to establish rights for tunnels connecting buildings, for aerial walk-ways to connect buildings, and for a parking garage that lies completely underground.

Preparing a perspective drawing showing a three-dimensional view of the area in question can help define the problem and identify the unique challenges.

3-Dimensional Description Examples

Underground Parking Garage Parcel

That portion of Lot 12 of Block 13 of James Blake's Addition to the City of Bowling Green, Kentucky lying below a horizontal plane having an elevation of 710.00 feet (National Geodetic Vertical Datum of 1929), except, however, that the northerly 126.58 feet by parallel lines of said part of Lot 12 is limited on its upper

[8] www.nsps.us.com

surface by a horizontal plane having an elevation of 699.25 feet, and also, except that the following described part of said Lot 12 (hereinafter referred to as the "709.75 tract") is limited on its upper surface by a horizontal plane having an elevation of 709.75 feet:

Commencing at the northwest corner of said Lot 12; then South 00 degree 00 minutes 00 seconds West (assumed bearing) along the west line thereof a distance of 126.58 feet to the point of beginning; thence North 89 degrees 59 minutes 30 seconds East parallel with the north line of said Lot 12 a distance of 137.08 feet; thence South 00 degrees 00 minutes 00 seconds West parallel with the west line of said Lot 12 a distance of 226.42 feet; thence South 89 degrees 59 minutes 30 seconds West parallel with the north line of said Lot 12 a distance of 137.08 feet to the west line thereof; thence North 00 degrees 00 minutes 00 seconds East along said West line a distance of 226.42 feet to the point of beginning.

The above mentioned upper limiting planes are intended to coincide with the structural "cover" or "top" (hereinafter referred to and further defined as the "slab") of the proposed underground facility. The elevations of said upper limiting planes are subject to variations in the upper surface of the slab as may exist in connection with the facility as constructed, by reason of construction variations, settling or otherwise.

The "slab" as used for purposes of this description refers to and includes the reinforced concrete slabs to be fastened in place to form the structural cover or top of the underground facility and does not include any waterproofing membrane, protective concrete coating or drains or other form the plaza surface or floor for any buildings or other improvements above.

The south line of the above described 126.58 foot strip and the north line of the above described "709.75 tract" are for purposes of this description intended to coincide with the south face of the ground level wall of a proposed skating rink building to be located within Lot 12. The location of said line is subject to variations in said south face as may exist in connection with said skating rink building as constructed within Lot 12 by reason of construction variations or otherwise.

The east and south lines of the above described "709.75 tract" for purposes of this description are intended to coincide with the east and south faces, respectively, of the east and south line of columns of a proposed skating rink building to be located within Lot 12. The locations of said east and south lines are subject to variations in said east and south column faces as may exist in connection with said skating rink building as constructed within Lot 12 by reason of construction variations or otherwise.

Subterranean Parcel

A three-dimensional, subterranean part of Capitol Avenue for purposes of the placement, maintenance and existence of reinforced concrete footings on Square 88 and in Capitol Avenue in the City of Indianapolis, Indiana being described as follows:

That portion of the following described part of Capitol Avenue lying below a horizontal plane having an elevation of 481.0 feet (National Geodetic Vertical Datum of 1929) and lying above a horizontal plane having an elevation of 471.0 feet:

Beginning at the northwest corner of said Square 88; thence on an assumed bearing of South 00 degrees 00 minutes 00 seconds West along the west line thereof and along the southerly extension thereof a distance of 426.30 feet to a point distant 5.00 feet south from the southwest corner of said Square 88; thence South 89 degrees 56 minutes 50 seconds West parallel with the westerly extension of the south line of said Square 88 a distance of 5.00 feet; thence North 00 degrees 00 minutes 00 seconds East parallel with the west line of said Square 88 a distance of 431.30 feet to a point distance 5.00 feet north from the westerly extension of the north line of said Square 88; thence North 89 degrees 59 minutes 30 seconds East parallel with said north line a distance of 5.00 feet to the northerly extension of the west line of Square 88; thence South 00 degrees 00 minutes 00 seconds West along said northerly extension a distance of 5.00 feet to the Point of Beginning.

Aerial Rights for Conduit

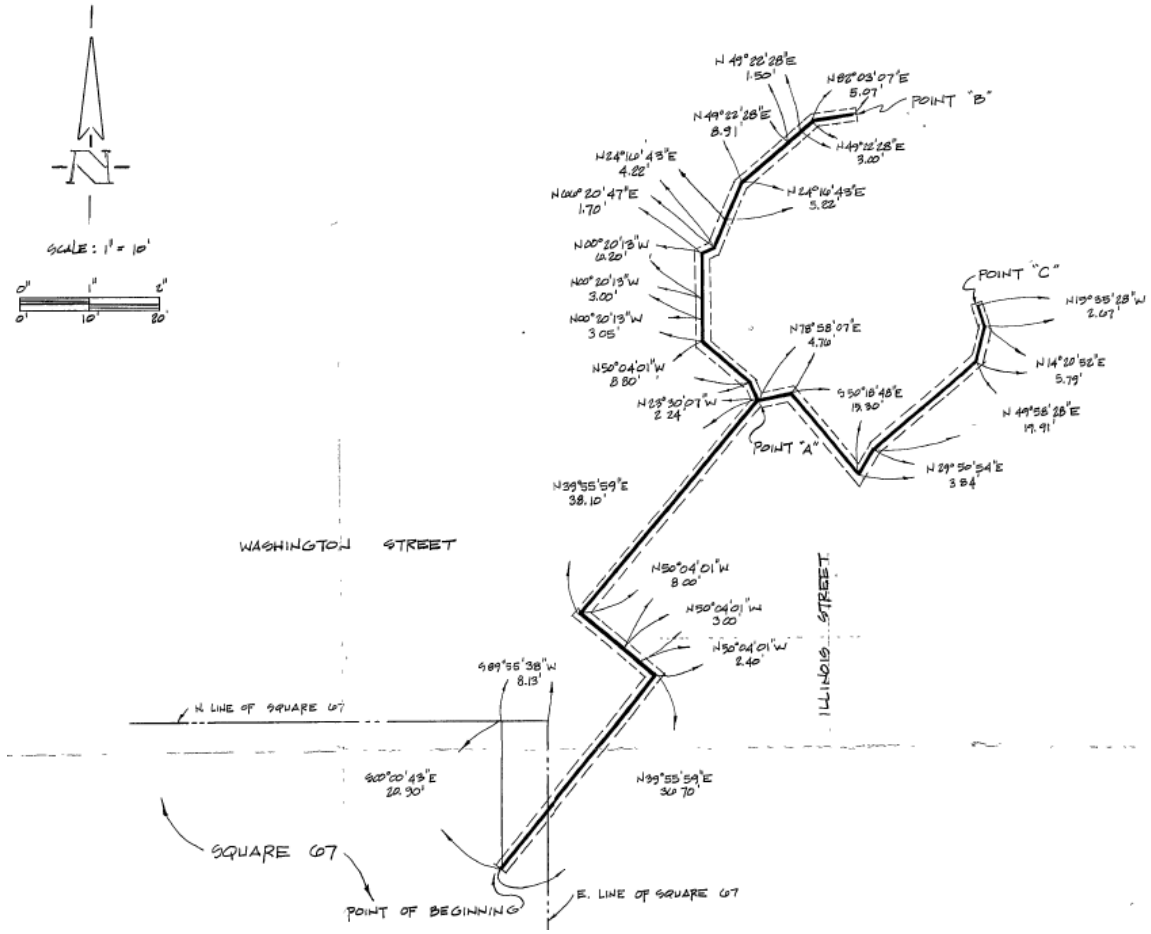
Aerial Rights Description
Washington and Illinois Streets

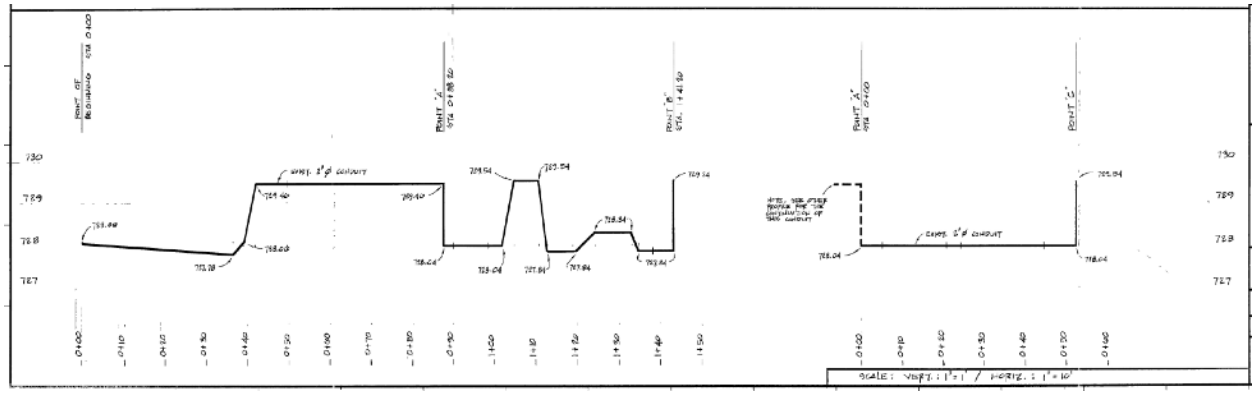
A part of the 120 foot right of-way of Washington Street and a part of the 90 foot right-of-way of Illinois Street and a part of Square 67 of the Donation Lands to the City of Indianapolis, Marion County, Indiana, said part being a 2 foot diameter three-dimensional cylindrical tract of air space centered around a 2 inch diameter electrical conduit, the centerline of said conduit being more particularly described as follows

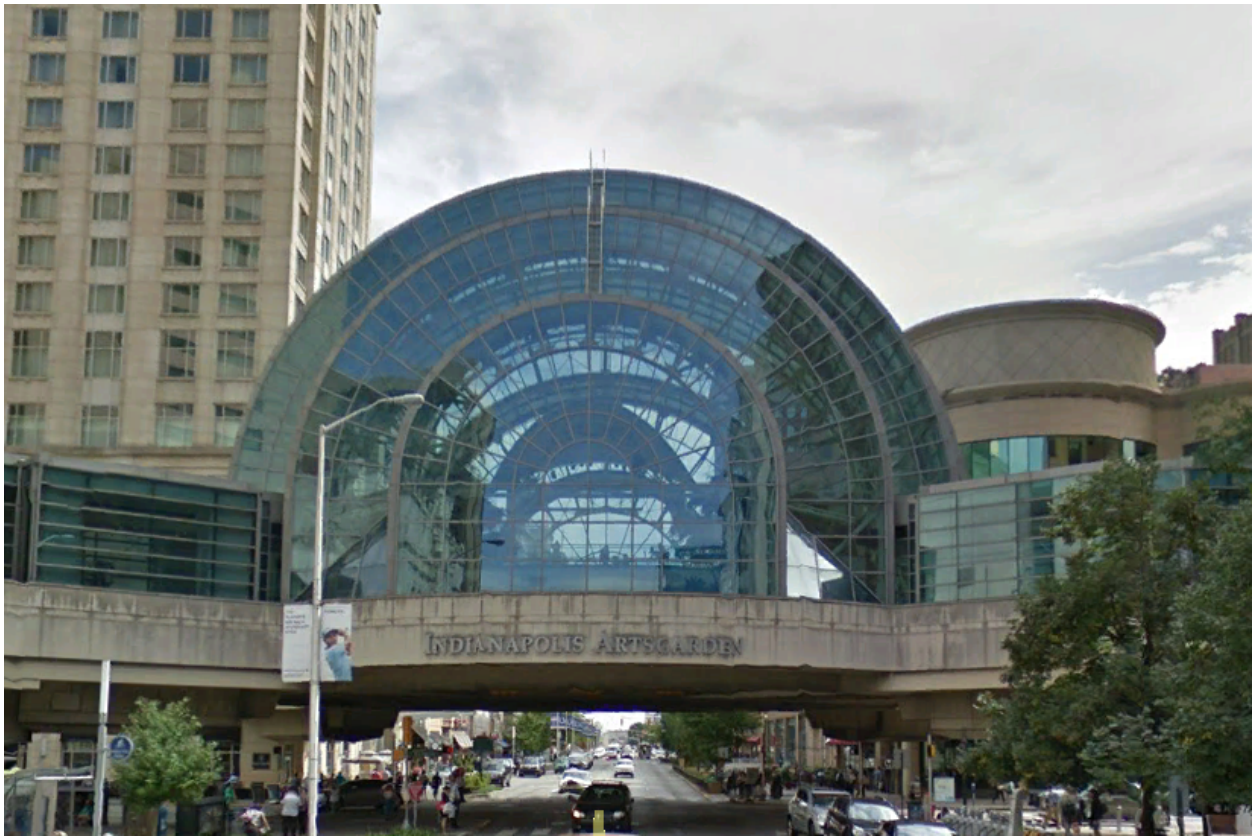
Commencing at the Northeast corner of said Square 67, thence South 89 degrees 54 minutes 38 seconds West along the North line of said Square 67 a distance of 8 13 feet, thence South 00 degrees 00 minutes 43 seconds East parallel with the East line of said Square 67 a distance of 20 90 feet to a point having an elevation of 728 06 (National Geodetic Vertical Datum of 1929), said point being the **Point of Beginning**, thence North 39 degrees 55 minutes 59 seconds East a distance of 36 70 feet to a point having an elevation of 727 78, thence North 50 degrees 04 minutes 01 seconds West a distance of 2 40 feet to a point having an elevation of 728 06, thence continuing North 50 degrees 04 minutes 01 seconds West a distance of 3 00 feet to a point having an elevation of 729 46, thence continuing North 50 degrees 04 minutes 01 seconds West a distance of 8 00 feet to a point having an elevation of 729 46, thence North 39 degrees 55 minutes 59 seconds East a distance of 38 10 feet to a point having an elevation of 729 46, thence descending vertical to **Point "A"** having an elevation of 728 04, thence North 23 degrees 30 minutes 07 seconds West a distance of 2 24 feet to a point having an elevation of 728 04, thence North 50 degrees 04 minutes 01 seconds West a distance of 8 80 feet to a point having an elevation of 728 04, thence North 00 degrees 20 minutes 13 seconds West a distance of 3 05 feet to a point having an elevation of 728 04, thence continuing North 00 degrees 20 minutes 13 seconds West a distance of 3 00 feet to a point having an elevation of 729 54, thence continuing North 00 degrees 20 minutes 13 seconds West a distance of 6 20 feet to a point having an elevation of 729 54, thence North 66 degrees 20 minutes 47 seconds East a distance of 1 70 feet to a point having an elevation of 727 84, thence North 24 degrees 16 minutes 43 seconds East a distance of 4 22 feet to a point having an elevation of 727 84, thence continuing North 24 degrees 16 minutes 43 seconds East a distance of 5 22 feet to a point having an elevation of 728 34, thence North 49 degrees 22 minutes 28 seconds East a distance of 8 91 feet to a point having an elevation of 728 34, thence continuing North 49 degrees 22 minutes 28 seconds East a distance of 1 50 feet to a point having an elevation of 727 84, thence continuing North 49 degrees 22 minutes 28 seconds East a distance of 3 00 feet to a point having an elevation of 727 84, thence North 82 degrees 03 minutes 07 seconds East a distance of 5 07 feet to a point having an elevation of 727 84, thence ascending vertical a distance of 1 40 feet to **Point "B"** having an elevation of 729 24 and thus terminating

Also

Beginning at aforementioned **Point "A"** having an elevation of 728 04, thence North 78 degrees 58 minutes 07 seconds East a distance of 4 76 feet to a point having an elevation of 728 04, thence South 50 degrees 18 minutes 48 seconds East a distance of 15 30 feet to a point having an elevation of 728 04, thence North 29 degrees 50 minutes 54 seconds East a distance of 3 84 feet to a point having an elevation of 728 04, thence North 49 degrees 58 minutes 28 seconds East a distance of 19 91 feet to a point having an elevation of 728 04, thence North 14 degrees 20 minutes 52 seconds East a distance of 5 79 feet to a point having an elevation of 728 04, thence North 15 degrees 35 minutes 28 seconds West a distance of 2 67 feet to a point having an elevation of 728 04, thence ascending vertical a distance of 1 50 feet to **Point "C"** having an elevation of 729 54 and thus terminating


SCALE : 1" = 10'
0" 1" 2"
0' 10' 20'
N 49°22'28"E 1.50'
N82°03'07"E 5.07'
POINT "B"
N 49°22'28"E 8.91'
N 49°22'28"E 3.00'
N24°16'43"E 4.22'
N 24°16'43"E 5.22'
N08°20'47"E 1.70'
N00°20'13"W 10.20'
N00°20'13"W 3.00'
N00°20'13"W 3.05'
POINT "C"
N13°55'28"W 2.07'
N78°58'07"E 4.70'
N50°04'01"W 8.80'
N 14°20'52"E 5.79'
N28°30'07"W 2.24'
S50°18'48"E 19.30'
N 49°58'28"E 19.91'
POINT "A"
N 29°50'54"E 3.84'
N39°55'59"E 38.10'
WASHINGTON STREET
N50°04'01"W 8.00'
N50°04'01"W 3.00'
N50°04'01"W 2.40'
ILLINOIS STREET
S89°55'38"W 8.13'
N. LINE OF SQUARE 07
S00°00'43"E 20.90'
N89°55'59"E 30.70'
SQUARE 07
POINT OF BEGINNING
E. LINE OF SQUARE 07





V. Reversionary rights

The term reversionary rights is often misused. It is frequently used in the context of "who does the land encumbered by the right of way revert to?" Recognizing the double use of the phrase "right of way" as meaning both the right of way easement rights and the actual strip of land covered by the right of way, the strip of land does not "revert" to anyone. What actually "reverts" are the easement rights; and they revert to the underlying fee owner.

Thus, reversionary rights represent the reclaiming of rights previously imposed on the property by virtue of a right of way or easement. In other words, when the interest held by others (e.g., the gas company, in the case of a gas line easement, or the public in the case of a road right of way) is released or vacated, the interest represented by that encumbrance is essentially merged back with the fee title.

Stated another way, the fee interest in a street or road that was not acquired in fee by the jurisdiction remains in the adjoining owner based on the location of the original boundary line. And depending on the state (see below) - the conveyance of real property adjoining a street or road carries that underlying fee to the original line of title - often, but not always, the center of the street or road. Such a claim is subject to two conditions:

(1) the easement and rights of the public, and
(2) Whether or not the grantor owned that part of the street at the time of the conveyance and, if so, whether there were words indicating a contrary intent.

Under the so-called "California Rule" a description calling for a right of way line and along a right of way line excludes title to the street.

Under the so-called "New Jersey Rule" nothing short of express intent to not include the street will exclude the street from being conveyed.

Vacation or Abandonment

There are no definitive, settled rules of law for apportionment of vacated rights of way, but when the side boundary lines of the adjoining tracts intersect the right of way at right angles or close to right angles, the solution may be fairly obvious: the prolongation of those side lines.

There are other potential solutions. For example, based on:

- proportional frontage
- radial lines
- by right angle

In cases where the solution is not obvious, scriveners would be well-advised to merely refer to that part of the vacated street/road adjoining the subject tract rather than trying to describe it.

Sometimes, upon vacation, the jurisdiction will attempt to specify who "gets" the vacated right of way. But, ordinances, laws and even court rulings cannot impact clear written title regarding underlying fee title in vacated rights of way.

When a railroad right of way is abandoned, the problem can be difficult. Who does the interest revert to in the case of a right of way that originally ran through a unified tract that was subsequently divided into parts – some or all of which were ostensibly conveyed to the sideline of the right of way?

Lots and adjoining parts of vacated streets

Streets and lots are two separate and distinct terms.

Be sure the wording in the description is definitive as to intent. If the referenced map is not clear, put a clarifying statement of intent, e.g., "Beginning at the northwest corner of Lot 10, being for purposes of this description, on the east line of the 60 foot right of way of 2nd Street pursuant to the plat of Central Addition, recorded in Plat Book 32, Page 17 if the Office of the Recorder of Marion County, Indiana ..."

III. Types of Descriptions

A. Metes and Bounds

The only type of description that tracks around the entire perimeter of a tract.

Related problems:

(1) destruction or movement of monuments
(2) rules of interpretation and precedence of calls
(3) discrepancies or errors in description

(All being the result of poor work, not of the system itself)

B. Bounds

Description by recital of all of the surrounding adjoiners. Some may call for record documents to establish the boundaries (road records, deeds, parcel maps). Establishes a clear intent. Generally not found in the Public Land Survey states except possible associated with blanket easements or when in the vicinity of a metes and bounds state (e.g, southern Indiana).

C. Aliquot Subdivision of Public Land

In the US Public Land Survey System, a regular subdivision of a section of land. Recognized by federal law down to the quarter-quarter section, but recognized in the private sector down to the quarter-quarter-quarter-quarter section (2 ½ acres).

D. Lot/Block in a Subdivision

A description that does not directly describe the subject real property, but does so by reference to a (preferably) recorded plat or map that identifies the location, size and shape of the property.

E. Strip ("Centerline")

Used on linear transmission, transportation routes; easements. Can involve separate segments with different widths for the strip.

Template for Strip Description - Multiple Parts

Part of Lot 20 in Bridlewood Subdivision recorded as Instrument Number 98-14852 in the Office of the Recorder of Dade County, Florida being a strip of land 10 feet in width, the centerline of which is described as follows:

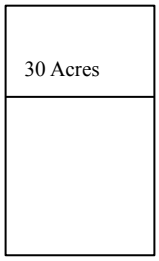
Commencing at the northwest corner of said Lot 20; thence South 00 degrees 12 minutes 25 seconds East (plat bearing) along the west line thereof a distance of 125.00 feet to the Point of Beginning; thence North 90 degrees 37 minutes 25 seconds East a distance of 375.00 feet to a point hereinafter referred to as Point A; thence continuing North 90 degrees 37 minutes 25 seconds East a distance of 125.00 feet; thence North 45 degrees 13 minutes 30 seconds East a distance of 250.00 feet to the Terminus.

Also, a strip of land 8 feet in width, beginning at the aforesaid Point A; thence South 00 degrees 22 minutes 35 seconds East a distance of 57.30 feet to the Terminus.

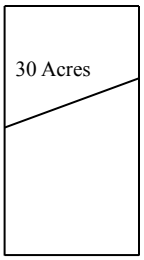
F. Area

Describes a parcel by defining a fixed number of acres off one end or side of the parent tract. There is a presumption that the dividing line created by the description is parallel with the line off which the acreage is taken, unless it is otherwise stated.

30 acres by parallel lines off the entire north end of the East half of the Northeast Quarter of Section 3…



30 acres off the entire north end of the East half of the Northeast Quarter of Section 3, the south line of said 30 acres being along a line bearing North 65 degrees East.[9]



G. Combination (Quasi Metes and Bounds) descriptions

i. Division Line

A part of a larger tract lying north, south, east or west of a described line.

Division Line Description Template

That part of Lot 25 in Lot 25 in Pebblebrook, Section 5 as recorded in Plat Book 25, Page 13 in the Office of the Recorder of Boone County, Indiana lying south of the following described line:

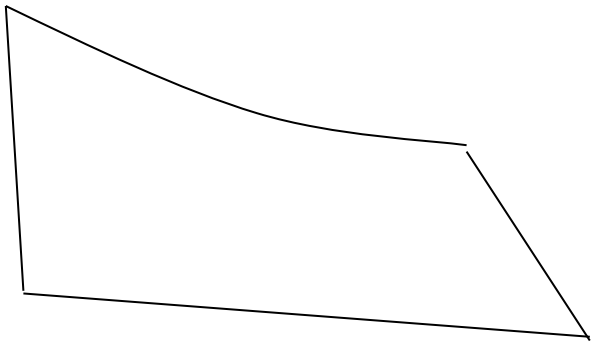
Commencing at the northwest corner of said Lot; thence bearing South 00 degrees 45 minutes 25 seconds West (plat bearing) along the west line thereof a distance of 100.00 feet to the Point of Beginning; thence South 85 degrees 00 minutes 15 seconds East a distance of 217.53 feet to the east line of said Lot and the Terminus.

[9] Note that a basis of bearings is required in this example.

ii. Proportional Parts

NOTE: Except in aliquot parts where it is well-defined (although perhaps only to the quarter-quarter level), proportionate parts descriptions define relative areas only, but do not define the dividing line unless specifically described! On a more or less regularly-shaped parcel, the solution might be considered fairly obvious, but when the parent tract is irregular, problems ensure.

Given: The East Half of Lot 12 in The Preserve at Koweba Creek, recorded in Plat Book 4, Page 235 in the Office of the Recorder of Clark County, Ohio, and the following sketch, where is the East Half?!



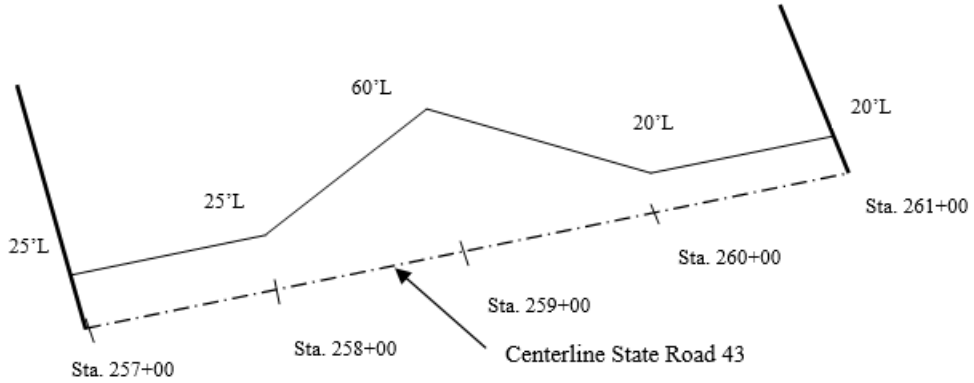
iii. Linear

Similar to an area description, except defines the parcel by distances off the referenced side of the larger tract rather than by acreage off the side of that tract.

e.g., 30 rods by parallel lines off the entire north end of the lands of Richard Eastman in Hamilton Township, Clark County, Indiana.

iv. Station/Offset

Used, if not still, at least in the past, by jurisdictions to describe right of way grants. Necessarily relies entirely on a surveyor's future ability to retrace the reference line on which the stations are based and off which the offsets are taken.



Referencing the above drawing (as would be shown on a set of right of way plans for proposed Highway 43): All that part of the owner's land lying north of the centerline of State Road 43 as shown on Lincoln County Highway Plans Project FA 135-642, to wit:

- 25 feet left from Station 257+00 to Station 258+00
- 25 feet left of Station 258+00 to 60 feet left of Station 259+00
- 60 feet left of Station 259+00 to 20 feet left of Station 260+00
- 20 feet left of Station 260+00 to Station 261+00.

H. State Plane Coordinates

Every state has an established state plane coordinate system with at least one zone. A number of states have developed their own new plane coordinate systems in order to, for example, facilitate the development of state-wide GIS where multiple zones can cause confusion or disjointedness.

The states also typically have a statute outlining the requirements associated with the use of the state plane coordinates for legal descriptions.

New Jersey Statutes Title 51. Standards, Weights, Measures and Containers 51 § 3-9

No survey of lands hereinafter made shall have indorsed thereon any legend or other statement indicating that it is based upon the New Jersey system of plane co-ordinates unless the co-ordinates have been established on that system as herein defined.

New Jersey Statutes Title 51. Standards, Weights, Measures and Containers 51 § 3-10

Nothing in this article contained shall be interpreted as requiring any purchaser or mortgagee to rely on a description based wholly upon the aforesaid [state plane coordinate] system.